

§416.1166

20 CFR Ch. III (4–1–10 Edition)

We then apply the \$20 general income exclusion, leaving each child with \$30 countable income. The \$30 of unearned income is less than the \$422 Federal benefit rate for an individual, so the children are eligible. We then determine each child's benefit by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See §416.420.

Example 3. Mrs. Jones is the ineligible mother of two disabled children, Beth and Linda, and has sponsored an eligible alien, Mr. Sean. Beth, Linda, and Mr. Sean have no income; Mrs. Jones has unearned income of \$924 per month. We reduce the mother's unearned income by the \$211 allocation for Mr. Sean, leaving \$713. We further reduce her income by the \$20 general income exclusion, which leaves a balance of \$693. Next, we subtract the amount we allocate for the mother's needs, \$422 (the amount of the Federal benefit rate for an individual). The balance of \$271 to be deemed is divided equally between Beth and Linda. Each now has unearned income of \$135.50 from which we deduct the \$20 general income exclusion, leaving each child with \$115.50 countable income. Since this is less than the \$422 Federal benefit rate for an individual, the girls are eligible. We then determine each child's benefit by subtracting her countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See §416.420. (For the way we deem the mother's income to Mr. Sean, see examples No. 3 and No. 4 in §416.1166a.)

Example 4. Jack, a disabled child, lives with his mother, father, and two brothers, none of whom are eligible for SSI. Jack's mother receives a private pension of \$350 per month and his father works and earns \$1,525 per month. We allocate a total of \$422 for Jack's ineligible brothers and subtract this from the parents' total unearned income of \$350; the parents' unearned income is completely offset by the allocations for the ineligible children with an excess allocation of \$72 remaining. We subtract the excess of \$72 from the parents' total earned income leaving \$1,453. We next subtract the combined general income and earned income exclusions of \$85 leaving a remainder of \$1,368. We subtract one-half the remainder, leaving \$684 from which we subtract the parents' allocation of \$633. This results in \$51 deemed to Jack. Jack has no other income, so we subtract the general income exclusion of \$20 from the deemed income leaving \$31 as Jack's countable income. Since this is below the \$422 Federal benefit rate for an individual, Jack is eligible. We determine his payment amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See §416.420.

(i) *Disabled child under age 18.* If you are a disabled child under the age of 18 living with your parents, we will not deem your parents' income to you if—

(1) You previously received a reduced SSI benefit while a resident of a medical treatment facility, as described in §416.414;

(2) You are eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(3) You would otherwise be ineligible for a Federal SSI benefit because of the deeming of your parents' income or resources.

[52 FR 8885, Mar. 20, 1987, as amended at 54 FR 19164, May 4, 1989; 57 FR 48562, Oct. 27, 1992; 60 FR 361, Jan. 4, 1995; 62 FR 1056, Jan. 8, 1997; 64 FR 31974, June 15, 1999; 72 FR 50874, Sept. 5, 2007; 73 FR 28036, May 15, 2008]

§416.1166 How we deem income to you and your eligible child from your ineligible spouse.

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child. For the purpose of this section, SSI benefits include any federally administered State supplement. We then follow the rules in §416.1165(e) to determine the child's eligibility for SSI benefits and in §416.1165(f) to determine the benefit amount.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in §416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in §416.1163(b).

(c) *Allocations for aliens who are sponsored by and have income deemed from your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from your ineligible spouse as described in §416.1163(c).

(d) *Determining your eligibility for SSI benefits and benefit amount.* We then follow the rules in §416.1163(c) to find out

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if any of your ineligible spouse's current monthly income is deemed to you and, if so, to determine countable income for a couple. Next, we follow paragraph (e) of this section to determine your child's eligibility. However, if none of your spouse's income is deemed to you, none is deemed to your child. Whether or not your spouse's income is deemed to you in determining your eligibility, we determine your benefit amount as explained in §416.1163(e).

(e) *Determining your child's eligibility and amount of benefits.* (1) If you are eligible for SSI benefits after your spouse's income has been deemed to you, we do not deem any income to your child. To determine the child's eligibility, we subtract the child's own countable income without deeming from the benefit rate for an individual.

(2) If you are not eligible for SSI benefits after your ineligible spouse's income has been deemed to you, we deem to your eligible child any of your spouse's income which was not used to reduce your SSI benefits to zero.

(f) *Examples.* These examples show how we deem income to an eligible individual and an eligible child in the same household. The Federal benefit rates used are those effective January 1, 1984.

Example 1. Mary, a blind individual, lives with her husband, John, and their disabled child, Peter. Mary and Peter have no income, but John is employed and earns \$605 per month. We determine Mary's eligibility first. Since John's income is more than \$157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire \$605 as earned income available to John and Mary as a couple. Because they have no unearned income, we reduce the \$605 by the \$20 general income exclusion, and then by the earned income exclusion of \$65 plus one-half the remainder. This leaves John and Mary with \$260 in countable income. The \$260 countable income is less than the \$472 Federal benefit rate for a couple, so Mary is eligible; therefore, there is no income to be deemed to Peter.

Example 2. Al, a disabled individual, resides with his ineligible spouse, Dora, and their disabled son, Jeff. Al and Jeff have no income, but Dora is employed and earns \$1,065 a month. Since Dora's income is more than \$157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire \$1,065 as earned income available to Al and Dora as a couple. We reduce this income

by the \$20 general income exclusion and then by \$65 plus one-half the remainder (earned income exclusion), leaving \$490 in countable income. Al is ineligible because the couple's \$490 countable income exceeds the \$472 Federal benefit rate for a couple. Since Al is ineligible, we deem to Jeff \$18, the amount of income over and above the amount which causes Al to be ineligible (the difference between the countable income and the Federal benefit rate for a couple). We treat the \$18 deemed to Jeff as unearned income, and we apply the \$20 general income exclusion, reducing Jeff's countable income to zero. Jeff is eligible.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48578, Nov. 26, 1985; 52 FR 8887, Mar. 20, 1987; 64 FR 31975, June 15, 1999]

§416.1166a How we deem income to you from your sponsor if you are an alien.

Before we deem your sponsor's income to you if you are an alien, we determine how much earned and unearned income your sponsor has under §416.1161(b). We then deduct allocations for the sponsor and the sponsor's dependents. This is an amount equal to the Federal benefit rate for an individual for the sponsor (or for each sponsor even if two sponsors are married to each other and living together) plus an amount equal to one-half the Federal benefit rate for an eligible individual for each dependent of the sponsor. An ineligible dependent's income is not subtracted from the sponsor's dependent's allocation. We deem the balance of the income to be your unearned income.

(a) *If you are the only alien applying for or already eligible for SSI benefits who has income deemed to you from your sponsor.* If you are the only alien who is applying for or already eligible for SSI benefits and who is sponsored by your sponsor, all the deemed income is your unearned income.

(b) *If you are not the only alien who is applying for or already eligible for SSI benefits and who has income deemed from your sponsor.* If you and other aliens applying for or already eligible for SSI benefits are sponsored by the same sponsor, we deem the income to each of you as though you were the only alien sponsored by that person. The income deemed to you becomes your unearned income.